IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3948 OF 2005

Shri Hemant Narayan Joshi ..Petitioner.

Versus

Shriram Vasudeo Godbole ..Respondent.

Mr. S.A. Sawant for the Petitioner.

CORAM : S. A. BOBDE, J.
DATED : 20TH OCTOBER, 2005.

P.C.:

1. None appears for the Respondent, though served. Notice for final disposal was issued by this court on 17.06.2005.

2. The petitioner is aggrieved by the order refusing amendment of the plaint which he has filed before the trial court. The suit was originally filed for a declaration and injunction to the effect that the defendant No.1 and the defendant No.2, who is a power of attorney holder, does not have any right in the suit property. He also sought injunction restraining the respondents from disturbing the lawful possession of the suit premises.

3. In the suit he applied for an amendment. By the amendment the plaintiff proposed to add a description of block No. 3 and further sought possession of the said block from the defendant No.1, i.e. respondent No.1 herein. This amendment has been rejected by the trial court for the reason that the nature of suit would be changed as also its valuation for the purpose of court fee. The trial court has also rejected the amendment application on the ground that the plaintiff has not sought amendment of the pleadings which pertain to valuation and jurisdiction for the purpose of court fees.

4. Having considered the matter, I am of view that the plaint ought to have been allowed to be amended since the plaintiff only sought a change in the description of the suit property and its possession. Undoubtedly, the plaintiff should be called upon to pay additional court fee, if so warrants. The learned counsel for the petitioner states that he would make appropriate amendment in the clause pertaining to the court fee and jurisdiction for the purposes of valuation, if so warrants. Having regard to the decision of this court in 2005 (2) Mh.L.J. 700 in the case of Lok Housing & Constructions Ltd., vs. Everest Industries Ltd. and

Nirmal Lifestyles Ltd., which relies on the decision of the Supreme Court (2001) 2 S.C.C. page 472 in the case of Ragu Thuilak D. John vs. S. Rayappan & Ors.; that even an inconsistent and a new cause of action should be permitted to be incorporated to avoid multifariousness of the proceedings. I am of view that the present amendment ought to have been allowed.

5. Rule is made absolute in the above terms.

DT. 20.10.05 (S.A.BOBDE,J)

.....